Filed 9/21/09 Jamerson v. County of Los Angeles CA2/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

KEITH L. JAMERSON, Plaintiff and Appellant, v. COUNTY OF LOS ANGELES, Defendant and Respondent.	B208910 (Los Angeles County Super. Ct. No. BC382032)

APPEAL from a judgment of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Affirmed.

Keith L. Jamerson, in pro. per., for Plaintiff and Appellant.

Office of the Los Angeles County Counsel and Millicent L. Rolon, Principal County Counsel, for Defendant and Respondent.

In this action for breach of contract and federal civil rights violations, the trial court sustained a demurrer without leave to amend and dismissed the complaint. We affirm the judgment of dismissal.

BACKGROUND

On December 7, 2007, plaintiff Keith L. Jamerson filed a complaint for breach of contract against the County of Los Angeles (the County), which was sued as the "People of the State of California." On March 3, 2008, plaintiff filed a first amended complaint that added several federal civil rights violation claims. (42 U.S.C. § 1983 (section 1983).)

According to the first amended complaint,[1] plaintiff was sentenced in 1999 to a term of 25 years to life (the 1999 sentence) under the "Three Strikes" law, which was enacted in 1994. (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) After plaintiff filed an unsuccessful appeal from his 1999 criminal conviction, he filed this 2007 civil action for monetary damages, costs, attorney fees, and other relief. Plaintiff alleged that the 1999 sentence was imposed in breach of his 1989 and 1992 plea bargain agreements, which he had entered with the understanding that he would be subject to future sentence enhancements of five years and one year, respectively.

On April 18, 2008, the County demurred to the first amended complaint on several grounds, including the expiration of the applicable statutes of limitations. The County argued that: (1) the breach of contract claim is barred by the two-year limitations period for oral contracts (Code Civ. Proc., § 339); and (2) the section 1983 claims are barred by the two-year limitations period for personal injury actions. (Citing Code Civ. Proc.,

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[1] Because this appeal arises from a dismissal following a demurrer to the first amended complaint, we accept as true all properly pleaded fact allegations. (*Gordon v. Law Offices of Aguirre & Meyer* (1990) 70 Cal.App.4th 972, 975, fn. 2.)

§ 335.1; *Knox v. Davis* (9th Cir. 2001) 260 F.3d 1009, 1012 [§ 1983 claims are subject to the forum state's statute of limitations for personal injury actions].)

Although plaintiff did not file an opposition to the demurrer, he filed motions (without accompanying proofs of service) to strike the demurrer and for summary judgment. Both motions were denied.

The trial court sustained the County's demurrer without leave to amend based on the expiration of the applicable statutes of limitations. The trial court's May 27, 2008 order stated in relevant part: "Plaintiff alleges that the legislature implemented [the Three Strikes law,] which resulted in longer sentences for any violent or serious prior convictions, in 1994. Plaintiff's claims accrued when the legislature implemented the [Three Strikes law] in 1994, since Plaintiff had reason to know of the injury at that time. Plaintiff brought this suit in 2007. Accordingly, all of Plaintiff's claims are barred by the statute of limitations."

Upon sustaining the demurrer, the trial court advanced and vacated the June 13, 2008 case management conference. Based on the order sustaining the demurrer without leave to amend, the trial court entered a judgment of dismissal on June 25, 2008. Plaintiff timely appealed from the judgment of dismissal.

DISCUSSION

I. Standard of Review

"'In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long-settled rules. "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. [Citation.] And when it is sustained without leave to amend, we decide whether there is a reasonable possibility

that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm. [Citations.] The burden of proving such reasonable possibility is squarely on the plaintiff.' (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) 'To meet [the] burden of showing abuse of discretion, the plaintiff must show how the complaint can be amended to state a cause of action. [Citation.] However, such a showing need not be made in the trial court so long as it is made to the reviewing court.' (*William S. Hart Union High School Dist. v. Regional Planning Com*. (1991) 226 Cal.App.3d 1612, 1621.) '[W]e may affirm a trial court judgment on any basis presented by the record whether or not relied upon by the trial court.' (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn. 1.)" (*Blumhorst v. Jewish Family Services of Los Angeles* (2005) 126 Cal.App.4th 993, 999.)

On appeal, the appellant "bears the burden of proving the trial court erred in sustaining the demurrer or abused its discretion in denying leave to amend. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* [(1998)] 68 Cal.App.4th [445,] 459; *Coutin v. Lucas* (1990) 220 Cal.App.3d 1016, 1020.)" (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1038.)

II. Plaintiff's Contentions

Based on his theory that, due to the enactment of the Three Strikes law, his 1989 and 1992 plea agreements should have been renegotiated before the 1999 sentence was imposed, plaintiff contends that: (1) the County improperly demurred to the complaint without "trying to negotiate the terms of contract ('plea agreement') its agency made with Appellant"; (2) "[t]he Superior Court never petition[ed] for writ of habeas corpus or order[ed] any telephone appearance by this complaining party other than to go along with the scheme of locking away People of Color in violation of know[n] contracts"; (3) the County "never once came to any agreement other than to usurp the Rules of Court by not meeting and conferring with this complaining party"; (4) the superior court "abused its discretion while interfering in Case Management orders"; and (5) the superior court

abused its discretion by failing to refer the case to arbitration or an alternate dispute resolution process.

III. Analysis

We begin our analysis by citing the familiar rule that "[n]o judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) The corollary to this rule is that "[i]f an appeal is pursued, the party asserting trial court error may not then rest on the bare assertion of error but must present argument and legal authority on each point raised. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.) This latter rule is founded on the principle that an appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness. (*Kurinij v. Hanna & Morton* (1997) 55 Cal.App.4th 853, 865.)" (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649-650; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 [the trial court's judgment or order is presumed correct and error must be affirmatively shown].)

In this case, the trial court sustained the demurrer based on the expiration of the respective two-year statutes of limitation for actions for breach of oral contract (Code Civ. Proc., § 339) and violation of section 1983 (Code Civ. Proc., § 335.1; *Knox v. Davis*, *supra*, 260 F.3d at pp. 1012-1013 [§ 1983 claims are subject to the forum state's statute of limitations for personal injury actions]). Accordingly, in order to establish grounds for reversal, plaintiff must present us with both argument and legal authority to show that the trial court erred in applying the respective two-year statutes of limitations to the claims in this case. (See *Boyle v. CertainTeed Corp.*, *supra*, 137 Cal.App.4th at pp. 649-650.) He has failed to do so. Although he cryptically states in the opening brief that the statute of

limitations defense is "highly irrelevant to this claim of 'breach of plea agreement,'" he does not provide either argument or legal authority to support this assertion.

When an appellant fails to include argument and citation to authority in his brief, we may elect to treat the issue as waived. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448.) As we have no obligation to develop an appellant's arguments for him (*Berger v. California Ins. Guarantee Assn.* (2005) 128 Cal.App.4th 989, 1007), we will not attempt to do so in this case, but will treat the undeveloped statute of limitations issue as waived.

In light of our determination to treat the undeveloped statute of limitations issue as waived, we need not reach the remaining issues raised in plaintiff's opening brief. Even if we assume for the sake of discussion that plaintiff is correct with regard to the remaining issues, there could be no conceivable prejudice because all of the causes of action are time-barred.

DISPOSITION

The judgment of dismissal is affirmed. The County is awarded its costs on appeal.

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SUZUKAWA, J.

We concur:

EPSTEIN, P.J.

MANELLA, J.